XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(26)

आदेश पत्रक

मामला क्रमांक Cr.A.No. 241/04 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

SB: HON'BLE SHRI DHIRENDRA MISHRA, J.

APPELLANT Gautam Rawate, son of Ram Singh, aged about 25 years, Resident of Gram Nawagaon, Police Station-Antagarh, Distt. Kanker (C.G.)

Vs.

RESPONDENTS State of Chhattisgarh, through Police Station Antagarh, Distt. Kanker (C.G.)

16.08.2007

Shri N.L. Vishwakarma, Advocate for the appellant.

Shri Neeraj Mehta, Govt. Advocate for the State.

2. This criminal appeal is directed against the judgment of conviction and order of sentence dated 29-11-2003 passed by the 4th Additional Sessions Judge, F.T.C., Kanker in S.T. No.352/2003 whereby the appellant has been convicted under Sections 363, 366 and 376 of I.P.C. and sentenced to undergo R.I. for 3 years, 5 years and 7 years with fine of Rs. 200/-, 300/- and Rs. 500/- respectively with usual default clauses.

3. Allegation against the appellant is that he eloped with the young prosecutrix aged 15 years on the pretext of marrying her and thereafter subjected her to sexual intercourse without her consent. The incident is of 23rd April, 2003 at about 10.00 A.M. As per the prosecution case, at 10.00 A.M. on 23-4-2003, the appellant called the prosecutrix and asked her to accompany him upto village Madle

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(27)

आदेश पत्रक

मामला क्रमांक Cr.A-No.241/04 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित 2	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

where they would marry. The prosecutrix refused on the ground that her mother shall reprimand her. Whereupon the appellant threatened her of her life, as a result of which, she accompanied the appellant and went with him to the house of his brother-in-law at village Madle and there he committed sexual intercourse with the prosecutrix continuously for 3 days. They stayed at village Madle for 5 days and thereafter on 1-5-2003, they went to village Korar in the house of Sangram Singh and resided there upto 10th May, 2003 and at Korar also, he committed sexual intercourse for 4 days and only on 11-5-2003, report was lodged in the Police Station Antagarh in Crime No. 31/2003 for offence Sections 363, 366, 506 and 376 of I.P.C. During investigation, the prosecutrix was sent for medical examination and her M.L.C. report is Ex. P-2 proved by Dr. Smt. Vidhi Tembhurnikar (P.W. 1). Underwear of the prosecutrix was seized. Slide of vagina of the prosecutrix was prepared and seized. After completing the investigation, charge sheet was filed in the Court of Judicial Magistrate First Class, Bhanupratappur who subsequently committed the case to the Sessions Judge, Jagdalpur from where learned Additional Sessions Judge received the case on transfer for trial.

4. The trial Court framed charges against the appellant under Section 363, 366, 506, 376 and 342 of I.P.C. and after trial convicted and sentenced the appellant as mentioned above.

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(28)

आदेश पत्रक

मामला क्रमांक G.A. No. 241/04 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित 3	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

5. Learned counsel for the appellant submits that the trial Court has held that the prosecutrix was less than 16 years of age at the time of incident which is not based on any admissible evidence available on record as no documentary evidence regarding the age of the prosecutrix has been adduced. She was also not sent for ossification test for the assessment of her age and only on the basis of photocopy of Tendu Patta Collection and payment of wages card which was seized vide Ex. P-8, in which her age is shown to be 15 years, the trial Court has held that the age of the prosecutrix was less than 16 years at the time of incident. It was further contended that from the evidence available on record, it would be evident that the prosecutrix accompanied the accused on her own free will and she traveled with the appellant from place to place which is suggesting of the fact that she was a consenting party, therefore, in absence of any definite proof of age and looking to the evidence available on record that the prosecutrix was a consenting party, the Court below ought to have acquitted the accused-appellant of all the charges.

6. On the other hand, learned counsel for the state has supported the impugned judgment.

7. I have heard learned counsel for the parties. I have perused the documentary and oral evidence available on record as also the impugned judgment.

(27)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक Cr.A.No. 241/04 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित 4	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

8. The first question to be considered is whether the prosecution was able to establish that the age of the prosecutrix was less than 16 years at the time of incident. To establish the age of the prosecutrix, the trial Court has relied upon the statement of the prosecutrix (P.W. 9) who has stated that she was 13 years old at the time of incident, Sukaro Bai (P.W. 8) mother of the prosecutrix who has stated that her daughter was 12 years old at the time of incident, Horilal (P.W. 4), Patel of the village who has stated the approximate age of the prosecutrix was 15-16 years and finally on the document of Ex. P-8 in which the age of the prosecutrix is mentioned as 15 years and has reached to the conclusion that the prosecutrix was less than 16 years of age at the time of incident. P.W. 8 Sukaro Bai in para 2 of her statement has stated that the age of the prosecutrix may be 12 years, however she could not remember her date of birth. In the cross-examination also, she has stated that she does not know the age of her daughter whereas the prosecutrix (P.W. 9) in para 12 of her statement has stated that she does not remember her date of birth, she has not studied, however her age is approximately 13 years. In para 19, she has denied the suggestion that she is 20 years old and has stated that she is stating her age 13 years on approximation. P.W. 4 Horilal in para 8 of his statement has stated that the age of the prosecutrix may be 15-16 years approximately. From the evidence of these witnesses, it is evident that they have stated the age of the prosecutrix only on guessing and there is no scientific or

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

30

आदेश पत्रक

मामला क्रमांक Cr.A-No.241/04 सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित 5	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

documentary evidence in this regard. So far as the document of Ex. P-8 is concerned, it is not a document for the purposes of assessing the age of a person and there is no evidence that on what basis the age of the prosecutrix was entered in the document of Ex. P-8 and the same cannot be held to be a conclusive proof that the prosecutrix was 15 years old at the time of incident. Thus from the evidence adduced by the prosecution available on record, it is evident that different age of the prosecutrix has been stated by the witnesses. The prosecutrix was not subjected to radiological test for assessing her age for the reason best known to the investigating agency. In these circumstances, the finding of the trial Court that the prosecution has been able to establish that the prosecutrix was less than 16 years old is erroneous and the same cannot be sustained and according to the opinion of this Court, there is no positive evidence available on record regarding the age of the prosecutrix by which it can be inferred that she was less than 18/16 years old at the time of incident.

9. Now coming to the second question whether the prosecutrix was abducted by the appellant and thereafter subjected to sexual intercourse without her consent. From the perusal of the statement of the prosecutrix (P.W. 9) particularly paragraph 20, it is found that the accused and the prosecutrix were in love with each other and she accompanied the appellant of her own free will and had sex with him with her consent and simply because the accused and the

[पी

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(3)

आदेश पत्रक

C.A.NO. 241/04

मामला क्रमांक ..... **सन्** **200**

..... **विरुद्ध** .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित 6	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

prosecutrix are of different castes, their marriage was not possible and, therefore, she was prohibited from going with the accused and marring the accused.

10. In the result, appeal preferred by the appellant is allowed. The judgment of conviction and sentence of the appellant for offence under Sections 363, 366 and 376 of I.P.C. is set aside. The appellant is acquitted of all the charges. He be set at liberty, if not required in any other case.

Sd/-
Dhirendra Mishra
Judge

[पीछे देखिये